

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JULIO CESAR NAVAS,

Plaintiffs,

v.

DEBORAH SCHUMACHER, et al.,

Defendants.

Case No. 3:18-CV-0041-MMD-CBC

REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR IB 1-4. Before the court are plaintiff's applications to proceed *in forma pauperis* (ECF Nos. 3 & 6).

This is a civil rights action brought by *pro se* prisoner plaintiff Julio Cesar Navas. Under the Prison Litigation Reform Act, if a prisoner has "on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or an appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted," that prisoner shall be precluded from commencing any new cases *in forma pauperis* except upon a showing of an imminent danger of serious physical injury. 28 U.S.C. § 1915(g). This provision applies to this case.

On at least three occasions this court has dismissed civil actions commenced by plaintiff for failure to state a claim for which relief could be granted. See *Navas v. State of Nevada*, Case No. 3:06-cv-0262-RCJ-VPC (dismissed case for failure to state a claim

1 and expressly held that the dismissal would count as plaintiff's "third strike" pursuant to
 2 28 U.S.C. 1915(g))¹; *Julio Cesar Navas v. Anna Marie Navas, et al.*, CV-N-04-0101-HDM-
 3 VPC (dismissal for failure to state a claim); *Julio Navas v. Second Judicial District Court*,
 4 CV-N-04-0653-HDM-VPC (dismissal for failure to state a claim). The court takes judicial
 5 notice of these court records. Fed. R. Evid. 201.

6 In addition, there are no allegations in the complaint or any other filing in the record
 7 that plaintiff is in imminent danger of any serious physical injury. Accordingly, plaintiff's
 8 application to proceed *in forma pauperis* should be denied and plaintiff should be ordered
 9 to pay the full filing fee in order for this case to proceed.

10 The parties are advised:

11 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
 12 Practice, the parties may file specific written objections to this Report and
 13 Recommendation within fourteen days of receipt. These objections should be entitled
 14 "Objections to Magistrate Judge's Report and Recommendation" and should be
 15 accompanied by points and authorities for consideration by the District Court.

16 2. This Report and Recommendation is not an appealable order and any notice
 17 of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District
 18 Court's judgment.

19 RECOMMENDATION

20 IT IS THEREFORE RECOMMENDED that plaintiff's applications to proceed *in*
 21 *forma pauperis* be DENIED, and plaintiff be ordered to pay the full filing of \$400 within
 22 thirty days in order for this case to proceed.

23 DATED: April 30, 2019.

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 25 UNITED STATES MAGISTRATE JUDGE

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 27 ¹ In Case No. 3:06-CV-0262-RCJ-VPC, the court explicitly states that "if plaintiff seeks *in forma*
 28 *pauperis* status for the filing of a lawsuit in the future, he must attach a copy of this Order to his application
 . . . or plainly inform the court in such application that he has been held subject to the restrictions of 28
 U.S.C. § 1915(g)." Plaintiff filed to attach the order to current application. In addition, the current
 applications make no mention of the order or the previous findings in this case.